

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE
LITIGATION

THIS DOCUMENT RELATES TO ALL
CLASS ACTIONS

)
) MDL No. 1456

)
) CIVIL ACTION: 01-CV-12257-PBS

)
) Judge Patti B. Saris

**PLAINTIFFS' SECOND MOTION TO COMPEL PRODUCTION BY AMGEN, INC.,
WITH REQUEST FOR EXPEDITED BRIEFING AND DISPOSITION**

Plaintiffs respectfully move the Court for an order:

a) compelling Amgen to begin immediately a rolling supplemental production in response to the requests made by plaintiffs, and to complete production by April 15, 2006, of all responsive and non-privileged documents and other materials, including data, called for by Plaintiffs' Omnibus Requests for Production and Interrogatories to Defendants Abbott, Amgen, Aventis, Baxter, Bayer, Boehringer, Braun, Dey, Fujisawa, Novartis, Pfizer, Pharmacia, Sicom, TAP and Watson and to All Other Defendants With Respect to Drugs That Were Not Previously Subject to Discovery, dated March 31, 2004; plaintiffs' IMS discovery requests (as referenced in the memorandum supporting this motion); and plaintiffs' limited document requests made of Amgen employees (or former employees) whose depositions plaintiffs have noted, or whose depositions plaintiffs will note as they complete review of Amgen's document production, to the extent Amgen has not yet produced any such responsive and non-privileged documents and other materials to plaintiffs;

b) requiring Amgen to pay a sanction of \$100,000.00 to the plaintiffs, or, in the alternative, to the Court, for Amgen's flagrant disregard of Case Management Order ("CMO")

No. 10 and its obligations under the Federal Rules of Civil Procedure, which has resulted in serious prejudice to the plaintiffs; and

c) requiring Amgen to reimburse plaintiffs for the costs, including attorneys' fees, incurred in filing and litigating this motion.

Because of the press of the Court's Track Two schedule, plaintiffs also ask that this motion be decided as expeditiously as possible, on shortened time. To that end, plaintiffs ask that the Court rule that Amgen must submit any opposition briefing and supporting materials no later than Monday, March 6, 2006.

This motion is supported by a memorandum of law filed of even date, together with the declaration of Robert F. Lopez in Support of Plaintiffs' Second Motion To Compel Production by Amgen Inc, with exhibits, which plaintiffs submit with this motion. It also is supported by the declarations of Steve W. Berman and Donald E. Haviland, Jr., together with their exhibits, both of which declarations plaintiffs submitted with their motion to compel against Amgen in October 2005. The Berman and Haviland declarations appear on the Court's docket at nos. 1822 and 1823, respectively.

DATED: February 27, 2006

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CERTIFICATE OF SERVICE

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **PLAINTIFFS' SECOND MOTION TO COMPEL PRODUCTION BY AMGEN, INC., WITH REQUEST FOR EXPEDITED BRIEFING AND DISPOSITION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on February 27, 2006, a copy to LexisNexis File & Serve for posting and notification to all parties.

By /s/ Steve W. Berman

Steve W. Berman

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